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BUENOS AIRES FOR HAARSAGER

E.O. 12958: N/A

TAGS: ETRD EINV EFIN EAGR BEXP

SUBJECT: MP 252 - BRAZILIAN TAX BREAKS FOR EXPORTERS

Ref: Brasilia 1682

¶1. As reported in reftel, on June 15 the Lula administration issued Provisional Measure (MP) 252, which enacts a series of changes in the tax system to benefit multiple sectors. Some Brazilian analysts have questioned the WTO-consistency of the tax benefits provided by the MP to exporters. Specifically, the "RECAP" section (Chapter 2) of the MP suspends certain taxes on the sales and importation of capital goods for firms for which 80 percent or more of their gross income is derived from exports. The "REPES" section (Chapter 1) provides certain tax exemptions for exporters of software and IT services.

¶2. Below is an unofficial translation of the RECAP and REPES portions of MP 252. Agencies/offices which are interested in obtaining the complete Portuguese version of MP 252 should contact Bruce Williamson at williamsonb@state.gov.

Begin Text.

"PROVISIONAL MEASURE No. 252, OF JUNE 15, 2005.

Institutes the Special Taxation Regime for the Information Technology Exportation Platform - REPES, the Special Regime for the Acquisition of Capital Goods by Exporting Enterprises - RECAP and the Program for Digital Inclusion, sets out provisions on fiscal incentives for technological innovation, and makes other provisions.

THE PRESIDENT OF THE REPUBLIC, in due exercise of the attributes conferred by Article 62 of the Constitution, adopts the following Provisional Measure which shall have force of law:

CHAPTER I

THE SPECIAL TAXATION REGIME FOR THE INFORMATION TECHNOLOGY EXPORTATION PLATFORM - REPES

Art. 1. The Special Taxation Regime for the Information Technology Exportation Platform is hereby instituted under the terms and conditions established by the Federal Revenue Secretariat.

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Art. 2. The beneficiary of REPES shall be a legally constituted entity that exclusively exercises activities of software development and information technology services, and that upon opting for REPES, assumes a commitment to export over 80 percent of their annual gross income of goods and services.

Sole Paragraph: The provisions of this article do not apply to legally constituted entities whose incomes, in total or part, are subject to the Accumulative Incidence Regime of contributions to PIS/PASEP and Contribution to Financing of Social Security (COFINS).

Art. 3. For purposes of production control and proof that the service contractor resides or lives overseas, the REPES beneficiary shall utilize open code computer programs.

Paragraph 1: The Federal Revenue Secretariat will have on-line access, through the Internet, to the information covered in this chapter, for purposes of audit, with access control through digital certification.

Paragraph 2: For purposes of recognition of the utilization of the software and hardware infrastructure, the program covered in this chapter will be registered by the Federal Revenue Secretariat.

Art. 4. The requirement for contributions to PIS/PASEP - Importation and COFINS-Importation levied on importation of new goods destined for development of software and information technology services inside the Country is suspended, when imported directly from a REPES beneficiary

for incorporation into their fixed assets.

Paragraph 1: The suspension also applies to contributions towards PIS/PASEP and COFINS payable on the sale of subject goods on the domestic market, when acquired by a legally constituted entity beneficiary of REPES.

Paragraph 2: Invoices relative to sales covered in paragraph 1, must contain the statement "Sale made with the suspension of PIS/PASEP and COFINS contribution requirement", which must appear together with the corresponding legal reference.

Paragraph 3: Based on this article, the percentage of exports mentioned in Article 2 will be calculated considering the average obtained, starting with the beginning of goods acquired under the scope of REPES, for a period of three years.

Paragraph 4: The period for initiation of the utilization referred to in paragraph 3 shall be no greater than one year after acquisition.

Art. 5. The requirement for contribution to PIS/PASEP and COFINS incurred on the importation of services destined to the development, in the country, of software and information technology when imported directly by REPES beneficiaries, will be suspended.

Paragraph 1: This suspension also applies to the contribution of PIS/PASEP and COFINS incurred on the sale of such services on the domestic market, when acquired by legally constituted entities who are REPES beneficiaries.

Paragraph 2: Invoices relative to sales covered in paragraph 1, must contain the statement "Sale made with the suspension of PIS/PASEP and COFINS contribution requirement", which must appear together with the corresponding legal reference.

Art. 6. Suspensions covered in Articles 4 and 5 convert into a zero percentage rate after a period of five years from the date of the occurrence of the respective facts.

Art 7. Adherence to REPES is conditional on the legally constituted entity's being up to date with regard to federal taxes and contributions.

Art. 8. The legally constituted entity will have their benefits cancelled:

I - in case of non-compliance with the export commitment covered in Article 2;

II - whenever it is discovered that the beneficiary:
a) doesn't satisfy the conditions or doesn't comply with the requirements for inclusion; or
b) stopped satisfying conditions or compliance with requirements for inclusion; and

III - upon request.

Paragraph 1: Upon cancellation of inclusion in REPES, the legally constituted entity will be subject to payment of interest and fines, mora or oficio, counting from the date of acquisition or registration of the Import Declaration, whichever the case, referring to unpaid contributions due to the suspension cited in Articles 4 and 5, as a contributor on imported goods or as responsible on goods acquired on the domestic market.

Paragraph 2: In the cases covered in clauses I and II, the legally constituted entity excluded from REPES, can only rejoin after a period of two years from the date of cancellation.

Art. 9. Transfer of property or cessation of use for any reason of the goods, imported or acquired on the domestic market, as per this chapter or paragraph 1 of Article 4, before complying with the provisions in clause 3 of the same Article, should be preceded by collection of interest and fines by the REPES beneficiary, mora or oficio, as per paragraph 1 of Article 8.

Art. 10. As per Article 9, if the beneficiary transfers the property before two years have passed, contributions will also be owed.

Art. 11. Adherence to REPES by a legally constituted entity who opted for the Integrated System of Payment of Taxes and Contributions for Microbusinesses and Small Businesses - SIMPLES, is prohibited.

Art. 12. Goods and services benefiting from the suspension defined in Articles 4 and 5 will be listed in regulation.

CHAPTER II

THE SPECIAL REGIME FOR THE ACQUISITION OF CAPITAL GOODS BY EXPORTING ENTERPRISES - RECAP

Art. 13. The Special Regime for The Acquisition of Capital Goods by Exporting Enterprises - RECAP is hereby instituted in compliance with the terms and conditions established by the Federal Revenue Secretariat.

Art. 14. The beneficiary of the RECAP shall be a legally constituted entity which predominantly exports, characterized as such by having had gross income originating from exportation activities equal to or superior to 80 percent of its overall gross income originating from the sale of goods and services, in the calendar year preceding its adherence to the RECAP, and which commits itself to maintain this percentage for a period of two calendar years.

Paragraph 1: A legally constituted entity initiating activities or which did not attain the percentage of exportation required by the heading paragraph of this Article may qualify for the RECAP provided that it makes a commitment to register a gross income originating from exportation abroad, of at least 80 percent of its overall gross income from the sale of goods and services, for a period of three calendar years.

Paragraph 2: The provisions of this article shall not be applicable to those legally constituted entities whose incomes are, partly or wholly, subject to the Accumulative Incidence Regime for PIS/PASEP and COFINS Contributions.

Art. 15. The requirement for PIS/PASEP-Importation and COFINS-Importation Contributions payable on the importation of new machines, apparatus, instruments and equipment as listed in the regulations, is hereby suspended when the same are imported directly by the beneficiary of the RECAP, to be incorporated as non-liquid assets.

Paragraph 1: The suspension referred to in the heading paragraph of this article shall also be applicable to PIS/PASEP and COFINS Contributions payable on the sale of such goods on the internal market when the same have been acquired by a legally constituted entity, beneficiary of the RECAP.

Paragraph 2: The benefit of the suspension provided for in the present article may be made use of for a period of three years counted from the date of adherence to the RECAP.

Paragraph 3: The percentage of exportation referred to in the heading paragraph and in paragraph 1 of Article 14 shall be determined by considering the average value obtained after initiation of the utilization of the goods acquired in the ambit of the RECAP over a period of:

I - two years, in the case of the heading paragraph of the present article;
II - three years, in the case of paragraph 1 of Article 14.

Paragraph 4: The period of time for initiating the utilization referred to in paragraph 3 shall not be longer than three years.

Paragraph 5: That legally constituted entity which incorporates goods in a different way to that foreseen in the heading paragraph, resells goods before the period referred to in sub-headings I or II of paragraph 3 or fails to comply with other provisions, shall be obliged to pay fine and interest, calculated from the date of acquisition, and referring to contributions not made due to the suspension referred to in the present article, in the role of:

I - taxpayer in relation to the PIS/PASEP-Importation and the COFINS-Importation Contributions; or
II - legally responsible party in relation to PIS/PASEP and COFINS Contributions.

Paragraph 6: In the Receipts for the Sales referred to in paragraph 1, the expression "Sale made with the Suspension of PIS/PASEP and COFINS Contribution Requirement" must appear together with the identification of the respective legal provisions.

Paragraph 7: The suspension provided for in the present Article shall be transformed into a zero percentage rate once the conditions referred to in the heading paragraph, and paragraph 1 of Article 14, have been met.

Paragraph 8: The legally constituted entity that fulfills the commitments set out in paragraph 1 of Article 14 may, in compliance with the same conditions established therein, make use of the benefit of suspension set out in Article 40

of Law No. 10.865 dated April 30, 2004.

Art. 16. Adherence to the RECAP is conditional on the legally constituted entity's being in a regular fiscal situation as regards federal taxes and contributions.

(Chapters 3-14)

Brasilia, June 15, 2005, 184th year of Independence and 117th of the Republic.

LUIZ INACIO LULA DA SILVA
Antonio Palocci Filho
Luiz Fernando Furlan
This text shall not substitute that published in the Official Gazette of June 16, 2005"

End text

MANGANIELLO